

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

October 13, 2011

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Cravens, Chair; Mike Owens; Marie Copeland; Frank Penn; Eunice Beatty; Carla Blanton; Derek Paulsen; Will Berkley; Patrick Brewer (arrived at 1:31 PM); Lynn Roche-Phillips and William Wilson (arrived at 1:34 PM).

Planning Staff Present – Chris King; Bill Sallee; Barbara Rackers; Jimmy Emmons; Cheryl Gallt; Chris Taylor, Denice Bullock, Traci Wade and Araba Prah. Other staff members in attendance were: Hillard Newman, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Firefighter Allen Case, Division of Fire & Emergency Services; Tim Queary, Division of Streets, Roads and Forestry; Rochelle Boland, Department of Law; Bettie Kerr and Amelia Armstrong, Division of Historic Preservation and Billy Van Pelt, Purchase of Development Rights.

- II. **APPROVAL OF MINUTES** – The Chair reminded the members that the Planning Commission minutes of the September 8, 2011, meeting had been previously distributed to the Commission, and were ready to be considered at this time.

Action - A motion was made by Mr. Owens, seconded by Ms. Beatty and carried 9-0 (Brewer and Wilson absent) to approve the minutes of the September 8, 2011, meeting.

- III. **POSTPONEMENTS OR WITHDRAWALS** – The Chair asked if anyone in the audience or staff wished to request postponement or withdrawal of any items listed on the Meeting Agenda. There was no response.

Note: Mr. Brewer arrived at this time.

IV. **COMMISSION ITEM**

- A. **RESOLUTION FOR FORMER PLANNING COMMISSION MEMBER** – Chairman Cravens stated that, at this time, the Commission and the staff would like to take an opportunity to honor Carolyn Richardson for her service to the Planning Commission and the Lexington-Fayette County community. Ms. Richardson joined Mr. Cravens and the other Commission members at the podium, where Mr. Cravens read the resolution for her, a copy of which is filed with the minutes of this meeting. Mr. Cravens thanked Ms. Richardson for her years of service, and offered her the opportunity to speak, if she so chose.

Ms. Richardson stated that she would like to thank her fellow Commission members, and to congratulate Mr. Cravens on being elected as the Chairman of the Planning Commission. She said that it has been a true privilege and an honor to serve on the Planning Commission. There are many ways to give back to the community, but she believes that there is nothing more rewarding than being able to serve on this Commission. Ms. Richardson said that it has been a joy to serve with the members, and she has great appreciation for their work, as well as their time and effort. She wished the Commission best of luck with the upcoming Comprehensive Plan since it will provide the city with the tools to move forward. Ms. Richardson then thanked the staff for their hard work and dedication, and said that she has worked with many people over the years, but she has never worked with a group of people who are more loyal, dedicated and professional. She then said that the staff's patience and good humor never cease to amaze her. Ms. Richardson concluded by thanking the Commission members and the staff and wished them good luck.

Note: Mr. Wilson arrived at this time.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, October 6, 2011, at 8:30 a.m. The meeting was attended by Commission members: Derek Paulsen, Eunice Beatty, Mike Owens, Frank Penn, Will Berkley and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Denice Bullock, Jimmy Emmons and Barbara Rackers, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

- Criteria:**
- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
 - (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
 - (3) no discussion of the item is desired by the Commission; and
 - (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
 - (5) the matter does not involve a waiver of the Land Subdivision Regulations.

- Requests can be made to remove items from the Consent Agenda:**
- (1) due to prior postponements and withdrawals,
 - (2) from the Planning Commission,
 - (3) from the audience, and
 - (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items, and the other item listed had been recommended for reapproval. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2011-90F: COLDSTREAM RESEARCH CAMPUS, UNIT 3, LOTS 8, 9-A & 9-B (AMD) (10/30/11)* - located at 1676 & 1648 McGrathiana Parkway. (Council District 2) **(Strand Associates)**

Note: The Planning Commission postponed this plan at the September 8, 2011, meeting. The purpose of this amendment is to subdivide 2 lots into 3 lots.

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Approval of street addresses as per e911 staff.
 5. Urban Forester's approval of tree protection area(s) and required street tree information.
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Addition of note regarding maintenance of park access easement.
2. PLAN 2011-102F: MAHAN PROPERTY, UNIT 1-H (12/1/11)* - located at Ridgewater Drive and Manitoba Lane. (Council District 4) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s) and required street tree information.
 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 7. Clarify floodplain line and required setback (CLOMR information).
3. PLAN 2011-103F: MAHAN PROPERTY, UNIT 1-I (12/1/11)* - located at Ridgewater Drive and Manitoba Lane. (Council District 4) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s) and required street tree information.
 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 7. Clarify floodplain line and required setback (CLOMR information).
4. PLAN 2011-104F: MAHAN PROPERTY, UNIT 1-J (12/1/11)* - located at Ridgewater Drive and Manitoba Lane. (Council District 4) **(EA Partners)**

* - Denotes date by which Commission must either approve or disapprove plan.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Clarify floodplain line and required setback (CLOMR information).

5. PLAN 2011-74F: SABLE HOLDINGS II, LLC. (12/27/11)* - located at 615-617 West Short Street.
(Council District 2) **(2020 Land Surveying)**

Note: The purpose of this final record plat is to subdivide one lot into 2 lots. On September 8, 2011, the Planning Commission indefinitely postponed the requested subdivision. Since that time, the applicant has met with the staff and revised their plan, requesting that it be brought back to the Planning Commission for approval at today's meeting. The applicant submitted a revised plan to the staff on September 28, 2011. The new plan creates a proposed lot line that will separate the residential features from the commercial features of the property in a manner that complies with the minimum lot size requirement of the R-4 zone.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Document demolition of the roof over the lot line, provided the Board of Architectural Review approves the demolition.
6. Document the Board of Adjustment approval of variances to the lot, yard, and height requirements prior to certification.

6. PLAN 2005-166F: CLARK PROPERTY, UNIT 1-B, SEC. 2 (12/27/11)* - located at 1551 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on July 14, 2005. All but eight lots of this subdivision plats were recorded (and created) on September 30, 2005. The Commission reapproved this plat for Section 2 on July 13, 2006; July 12, 2007; and September 11, 2008; and granted an extension on September 10, 2009 and September 9, 2010, subject to the conditions listed below.

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Addition of utility and street light easements by the utility companies and the Urban County Traffic Engineer.
5. Urban Forester's approval of tree preservation plan.
6. Approval of street names and addresses by e911 staff.
7. Addition of exaction information.

Note: The applicant now requests reapproval for Section 2 of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions, revising the following:

5. Urban Forester's approval of tree preservation plan and required street tree information.

7. PLAN 2006-139F: NEWMARKET PROPERTY, UNITS 1-D & 7-A (12/27/11)* - located at 1321 Deer Haven Lane (a portion of). (Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on July 13, 2006, and reapproved it on November 8, 2007 and January 15, 2009, subject to the conditions listed below.

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of addresses by e911 staff.
6. Denote: This property shall be developed in accordance with the approved final development plan.

* - Denotes date by which Commission must either approve or disapprove plan.

Note: The applicant now requests reapproval of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~

Adding the following:

7. Urban Forester's approval of tree preservation plan and required street tree information.

8. PLAN 2006-240F: NEWMARKET, PHASE I, UNIT 1-E (12/27/11)* – located at 1201 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on November 9, 2006, and reapproved it on November 8, 2007 and January 15, 2009, subject to the conditions listed below.

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation areas.
6. Label Tree Protection Area (TPA) per conditional zoning restrictions.

Note: The applicant now requests reapproval of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~

5. Urban Forester's approval of tree preservation plan and required street tree information.

9. PLAN 2007-156F: CLARK PROPERTY, UNIT 1-M (12/27/11)* - located at Polo Club Boulevard and Ice House Way.
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on August 9, 2007; reapproved it on September 11, 2008 and granted an extension on September 10, 2009 and September 9, 2010, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Verification of exaction information by Division of Planning.

Note: The applicant now requests reapproval of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~

5. Urban Forester's approval of tree preservation plan and required street tree information.

10. DP 2011-84: MICHAEL GENTRY PROPERTY (12/1/11)* - located at 3292 Richmond Road.
(Council District 7) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Provide drive aisle dimensions at property entrances.
10. Resolve sidewalk and pedestrian facilities.

11. DP 2011-85: WIGGINS & COMPANY, INC. (AMD) (12/1/11)* - located at 2490 Nicholasville Road.
(Council District 4) **(Wheat & Ladenburger)**

* - Denotes date by which Commission must either approve or disapprove plan.

Note: The purpose of this amendment is to revise development of 2490 Nicholasville Road.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Addition of adjacent property information.
9. Addition of topographic information for convenience store lot.
10. Denote height of proposed building.
11. Addition of erosion control plan note per Article 21-6(a)(14) of the Zoning Ordinance.
12. Denote the Board of Adjustment's approval for the variances prior to certification.
13. Kentucky Transportation Cabinet's approval of access to Nicholasville Road.

In conclusion, Mr. Sallee said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed for discussion purposes.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Brewer, seconded by Mr. Paulsen, and carried 11-0 to approve the items listed on the Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

1. PRELIMINARY SUBDIVISION PLANS

- a. PLAN 2007-197P: MASTERSON HILLS (A PORTION OF) (AMD) (2/2/12)* – located at 3000 Spurr Road.
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 11, 2007; subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Greenspace Planner's approval of the treatment of greenways.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Environmental Planner's approval of environmentally sensitive areas.
9. Division of Fire's approval of emergency access and fire hydrant locations.

Note: The applicant now requests reapproval of the plan.

The Staff Recommended: **Reapproval**, subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
5. Urban Forester's approval of tree preservation plan ~~and required street tree information.~~

Staff Presentation – Ms. Gallt identified the preliminary subdivision plan on the regular Meeting Agenda, noting that the subject property is located at 3000 Spurr Road. She presented a rendering of this plan, and said that the Planning Commission had originally approved this item on October 11, 2007. Since that time, the original approval granted by the Commission to construct the roads has expired. The applicant is now requesting reapproval of this

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plan in order to move forward with the remaining area of the Masterson Hills Subdivision. She said that the staff is recommending reapproval of the applicant's request for plan reapproval, subject to the original conditions, revising the following two conditions:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
5. Urban Forester's approval of tree preservation plan and required street tree information.

Planning Commission Question – Ms. Roche-Phillips asked why this item was not listed on the Consent Agenda. Ms. Galt said that the time allowed from the original approval has been exceeded; therefore, the staff is required to present this item to the Commission for consideration.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested reapproval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for reapproval. There was no response.

Planning Commission Question – Ms. Copeland asked for a brief summary of the location of this reapproval. Mr. Kahly noted the location of the proposed subdivision on the rendering.

Action - A motion was made by Ms. Copeland, seconded by Ms. Roche-Phillips, and carried 11-0 to reapprove PLAN 2007-197P: MASTERSON HILLS (A PORTION OF) (AMD), subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
5. Urban Forester's approval of tree preservation plan and required street tree information.

2. FINAL SUBDIVISION PLANS

- a. PLAN 2011-105F: SPY COAST FARM KENTUCKY, LLC (12/1/11)* - located at 3229 Iron Works Road.
(Council District 12) **(MSE)**

Note: The purpose of this final record plat is to subdivide one 330-acre lot into 5 lots, ranging between 40 to 106-acre lots zoned A-R. This subdivision also requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Delete access easement acreage from Lot 1 information.
8. Provided the Planning Commission grants a waiver of frontage requirements for Lot 2.

Staff Presentation – Mr. Martin identified this final record plat on the regular Meeting Agenda, and directed the Commission's attention to a rendering of this plat, noting that the purpose of this request is to subdivide one 330-acre lot into 5 lots, ranging between 40 to 106-acre lots zoned A-R. The subject property fronts along Iron Works Pike, as well as Newtown Pike. He then directed the Commission's attention to an aerial photograph of the area and reoriented the Commission to the location of the subject property and nearby street system, as well as the existing uses within the general vicinity. He noted that there are existing farm roads already in place on the property, and they are being utilized by the current agricultural uses.

Mr. Martin said that the Subdivision Committee reviewed the applicants' request and recommended approval, subject to the conditions listed on today's agenda. He gave a brief explanation of those conditions, and noted that conditions #1 through 6 are typical "sign-offs" from the different government divisions. He then said that condition #7 is related to the information being provided for Lot 1. The applicant will need to remove the access easement acreage from the lot acreage. He said that there are two farm roads that run through the subject property, one of which is designed to provide service to Lot 4. Although Lot 4 has frontage on both Newtown Pike and Iron Works Pike, there is no direct access to those roads. Therefore, the staff is recommending creating an access easement for the farm road in order for it to remain as access for Lot 4. As for the access easement being shown on Lot 1, it is designed to also serve Lot 2, which has no direct access to Iron Works Pike.

Mr. Martin stated that the applicant is requesting a waiver of Article 6-4(c) of the Subdivision Regulations related to the required lot frontage for Lot 2, which will be a 65-acre tract (condition #8). He said that the applicant is proposing to provide service to Lot 2 through the 50' access easement on Lot 1 that fronts along Iron Works Pike.

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He briefly described the applicant's proposal, and said that Lot 2 has been approved by the U.S. Department of Agriculture, and is currently being utilized as an Equine Semen Collection Center. This type of use allows the collection and exportation of equine semen to Great Britain and European Union countries. The applicant is also proposing a permanent facility for the quarantine of imported horses. He noted that this type of activity is regulated by strict federal controls, and having a controlled access into these facilities is important. Mr. Martin noted that in 2007, the Planning Commission had previously granted 3 identical frontage waivers for properties in the general vicinity.

In conclusion, Mr. Martin said that the staff agrees with the applicant's request, and recommends approval of the requested waiver, for the following reasons:

1. Strict enforcement of the Subdivision Regulations would constitute a hardship for the applicant due to the stringent USDA requirements governing the use of the property, and the location of existing farm, improvements.
2. Granting the waiver of the Subdivision Regulations will not negatively impact public health and safety.

Planning Commission Questions – Mr. Penn asked if the proposed access easements will be deed restricted. Mr. Martin responded affirmatively. Mr. Penn then asked if the corner lot at Newtown Pike and Iron Works Pike has a separate deed, and if so, if this will create 6 lots. Mr. Martin said that Spy Coast Farm Kentucky, LLC does own the corner lot, and it is a separately deeded tract, but it is not included in this proposal. .

Ms. Roche-Phillips asked if 3575 Newtown Pike is also a deeded tract. Mr. Martin replied yes, and said that 3575 Newtown Pike is under different ownership. He then said that the applicant does own a small tract located at 3487 Newtown Pike, which is not part of this proposal.

Ms. Roche-Phillips said that it is not a good idea for the Planning Commission to approve large lots without direct access to a main road. She asked how much of an easement will be provided along Iron Works Pike. Mr. Martin said that there is also an existing network of roads through the subject property. He said that there will be direct access either from Iron Works Pike or Newtown Pike, with the exception of Lot 2, which will have access through Lot 1. Ms. Roche-Phillips then asked how wide the access easement is, to which Mr. Martin replied that the width will be 50 feet and the length is being estimated at 1,055 feet.

Ms. Roche-Phillips recognized that this particular use is unique; and even though there is a federal requirement to have controlled access, once the lot is created, it is created in perpetuity, regardless of existing land use. She then said that there is also a concern with providing a permanent access to Lot 2 from Lot 1, especially if this type of use (USDA facility) is removed. Mr. Martin said that the Planning Commission granted waivers similar to this request in 2007, but with those requests the use was not this specific. He then said that there are existing easements (farm roads) already on the subject property, and, if necessary, access to either Newtown Pike or Iron Works Pike could be achieved.

Representation – Sam Carneal, attorney, was present representing the applicant. He said that Spy Coast Farm Kentucky, LLC was originally purchased through two deeds that composed 6 tracts. His client is proposing to take 4 out of the 6 tracts to create 5 tracts. He said that the layout of the tracts follow the existing usage of the property. This type of layout ensures that the lot lines will not run through the paddocks or through the farm roads. Mr. Carneal said that the length of the access easement from Iron Works Pike to the rear of Lot 1 is 1,057 feet. He then said that Lot 2 will handle the housing of the animals imported from overseas that will be attending nearby events. The protocol for importing horses into the country requires them to undergo a 21-day quarantine to ensure that they are disease free. He said that there will be a permanent facility on site, 8 barn stalls, a riding ring and various paddocks within a controlled area. He then said that Lot 2 has been approved by the U.S. Department of Agriculture as an Equine Semen Collection Center.

Mr. Carneal said that his client does own the small tract located at 3487 Newtown Pike, noting that there is a small farm house situated on that land; but his client does not own 3575 Newtown Pike. In conclusion, he said that his client is in agreement with the staff's recommendations, and requested approval.

Planning Commission Questions – Mr. Penn asked how wide the access easement on Lot 5 is. Mr. Martin replied that the access easement is 50 feet. Mr. Penn said that if this proposal is granted, the access easement needs to be permanent to allow the next property owners the choice as to whether or not to use the existing road. Mr. Carneal said that the access easement on Lot 5 would be noted on the plat as permanent.

Ms. Roche-Phillips asked for clarification as to which lots were being subdivided. Mr. Carneal said that there are several lots that are not part of this proposal, and briefly explained which lots were not included. Ms. Roche-Phillips confirmed that the lot lines being shown on the rendering had been cleaned up. Mr. Carneal said that the layout of the lot lines follows existing farm roads or fence lines. Ms. Roche-Phillips asked how different the proposed layout is from the existing layout. Mr. Carneal briefly explained the original layout compared to the proposed layout on the rendering. He noted that there are existing culverts and creeks on this property.

Mr. Cravens asked if there is a proposal to sell these lots. Mr. Carneal said that there are no plans to sell these lots. He said that his client's intent is to merely clean up the lot lines at the same time as they receive the USDA certification.

Ms. Beatty asked if there are horses being housed on the property. Mr. Carneal replied affirmatively, and said that they had received USDA approval in September 2011.

Mr. Carneal submitted the required photograph of the sign posting and an affidavit to the staff

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for reapproval. There was no response.

Action – A motion was made by Mr. Penn, seconded by Ms. Beatty, and carried 10-1 (Roche-Phillips opposed) to approve PLAN 2011-105F: SPY COAST FARM KENTUCKY, LLC, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Delete access easement acreage from Lot 1 information.
8. Provided the Planning Commission grants a waiver of frontage requirements for Lot 2.

Action – A motion was made by Mr. Penn, seconded by Mr. Owens, and carried 11-0 to approve the requested waiver, for the following reasons:

1. Strict enforcement of the Subdivision Regulations would constitute a hardship for the applicant due to the stringent USDA requirements governing the use of the property, and the location of existing farm, improvements.
2. Granting the waiver of the Subdivision Regulations will not negatively impact public health and safety.

3. DEVELOPMENT PLANS

- a. DP 2011-83: SHARKEY PROPERTY, UNIT 1, LOTS 8 & 13 (AMD) (12/1/11)* - located at 1781 Sharkey Way.
(Council District 2) **(Barrett Partners)**

Note: The purpose of this amendment is to revise the buildable area, parking & circulation and add a drive-through lane.

The Subdivision Committee Recommended: Postponement. There were questions regarding the amount of parking spaces provided for the use proposed on the property as well as the orientation of the 2nd drive-through lane.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Addition of final record plat for property (Plat Cab. M, Sl. 255).
9. Label tree island from previous plan.
10. Addition of grease trap note to the approval of the Division of Water Quality.
11. Denote the need for reciprocal parking on the development plan.
12. Discuss the need for additional parking (over the minimum).

Staff Presentation – Mr. Sallee identified this amended development plan on the regular Meeting Agenda, and noted that this property is located at 1781 Sharkey Way. He then noted that the staff had received a letter from Mary Anne Harper, who has requested notification to be sent to the Townley Park HOA when any future requests are made by the applicant. (A copy of the letter is attached as an appendix to these minutes).

Mr. Sallee directed the Commission's attention to the staff exhibit, and said that the subject property is located south of the Leestown Road and West New Circle Road interchange, in the Townley Center. He briefly described the existing land uses within the general vicinity, and said that the subject property is situated at the corner of Hatter Lane, Sharkey Way, and Old Towne Walk. It is in a Neighborhood Business (B-1) zone. Mr. Sallee then

* - Denotes date by which Commission must either approve or disapprove plan.

directed the Commission's attention to an aerial photograph to further orient the omission to the current land uses within the area, and said that the Center currently has a mixture of uses that range from restaurants, convenience stores, apartment complexes and mixed use buildings, as well as single family residential.

Mr. Saltee displayed the previously approved development plan on the overhead projector, and said that the site was approved for a single building with associated off-street parking. The approved uses for this building consist of two restaurants, one of which had a drive-through lane, and a retail store. He then said that there are three ways to gain access into the development, two of which are off Hatter Lane and Sharkey Way; and the third access is through the internal connection with the adjacent property, which has been developed.

Mr. Saltee stated that the staff was not sure if this item would be postponed at today's meeting, so the staff submitted a revised recommendation to the Planning Commission. He said that this request was reviewed and had received a recommendation for postponement from the Technical Committee and the staff, and the Subdivision Committee.

Mr. Saltee said that the amended development plan does not propose to change the building location, but it does request changing one of uses from a retail store to a third restaurant with a rear drive-through lane parallel to Hatter Lane. An additional restaurant use would require more parking than what was originally approved. He said that the previous development plan was approved for 49 parking spaces, but only required 33 spaces, which left a surplus of 16 parking spaces. The amended development plan will now require 38 parking spaces; but only 39 spaces are being proposed. He said that what is driving this amendment is the additional drive-through lane for the middle restaurant tenant. He then said that the other significant change to this development is the proposed traffic circulation and movement. The currently approved development plan has only one one-way movement, but the amended development plan is now proposing only one two-way movement (adjacent to Lot 12).

Mr. Saltee said that the Subdivision Committee reviewed the applicant's request and recommended postponement of this amendment; however, should this plan be approved, the conditions listed on today's agenda should be considered. He gave a brief explanation of those conditions, and noted that conditions #1 through 11 are typical "sign-offs" from the different government divisions and clean-up items. He then said that there were questions regarding the amount of parking spaces provided for the use proposed on the property (condition #12) as well as the orientation of the 2nd drive-through lane.

Mr. Saltee said that with the proposed development plan not being revised since the Subdivision Committee meeting; and with the staff's understanding that the applicant does not wish to postpone this plan, the staff concluded that the amended development plan will change the initial character of the development, and is now recommending disapproval of this amendment, for the following reasons:

1. Although this proposed amendment to the current development plan meets the minimum standards listed in Article 21-4(c) of the Zoning Ordinance, the requested amendment will adversely alter the essential character of the development as originally approved, for the following reasons:
 - a. The plan is now anticipated to accommodate three restaurants on a fairly small lot. The current plan has a surplus of 16 parking spaces for a mixture of retail and restaurant uses, while the revised plan would only have a surplus of 1 parking space – barely meeting the minimum requirements.
 - b. Only one accessory drive-through lane is currently requested for use on this property. However, two such facilities are now proposed on this plan, one closer to existing single family residential land uses to the west.
 - c. The existing circulation pattern on the site involves extensive use of one-way traffic movements (for three of four drive aisles), where the currently approved plan only has one such movement on the subject property.
 - d. No reciprocal parking has been identified with the adjoining parking lot to the south.

Representation – Dick Murphy, attorney, was present representing the applicant. He noted that Tony Barrett, Barrett Partners; John Strobe; and the Townley Center Neighborhood Association were present, as well. He said that since the Subdivision Committee meeting, they have worked very diligently with the neighborhood association to address the issues that were stated at that time, and they have reached an agreement. Mr. Murphy said that they were not aware of the staff recommendation until the morning of the meeting, which by that time, there was no time to inform the neighborhood association or the residents who are present. He then said that it would not be fair to the residents who had taken off work to come back to another meeting.

Mr. Murphy said that they had met with the Townley Center neighborhood association, and reached an agreement to add a note on the development plan that references the drive-through windows. He then said that even though the development plan shows two drive-through windows, only one would be operational at any given time by a business. (A copy of the note is attached as an appendix to these minutes). This will provide some flexibility for the needs of the tenants. Mr. Murphy said that the menu boards will not be positioned at the rear of the building, but at the sides of the building. Mr. Anderson and the neighborhood association are currently working on options for additional landscaping along the boundaries. He said that the size of the landscaping area will not increase, but the amount of landscaping will increase to create a more densely screened area. This will help shield the residents

from the activity of the center. Mr. Murphy said that the lighting for this area will be softer lights directed downward so as not to disturb the residents.

Mr. Murphy said that they are not expecting the Planning Commission to approve the landscaping agreement between the neighborhood association and his client, but rather they are requesting approval of the development plan because it meets the minimum requirements of the regulations. He said that they are in agreement to place a note on the development plan to limit the number of drive-throughs in use at any one time.

Mr. Murphy directed the Commission's attention to the staff's reasoning for disapproval, and said that this request meets the minimum parking requirements. In fact, they have one parking space more than what the Zoning Ordinance requires. He then said that if additional parking is needed, his client is the property owner of the adjacent lots; and a reciprocal parking note can be added to the plan, which will resolve 1a and 1d prior to certification. He then said that the staff also cited that only one accessory drive-through lane is currently requested for use on this property. They have addressed 1b by agreeing to add the note on the development plan to limit the number of drive-throughs in use at a time. He said that the staff had mentioned their concern with the one-way traffic movement (1c), but their proposal provides a safer traffic movement through the area.

Mr. Murphy said that they did not want to postpone this request because this is the third meeting the neighborhood has attended in 3 weeks. He then said that they strongly believe they meet the minimum requirements of the Zoning Ordinance, and requested approval. They have addressed the concerns from the Subdivision Committee and the neighborhood association. He said that his client is requesting the Planning Commission to approve this request, subject to the conditions listed on today's agenda. He noted that the reciprocal parking will be denoted on the development, which will address condition #11, and as for condition #12, they do meet the minimum parking requirements. If additional parking is required, the adjacent lots would be used.

In conclusion, Mr. Murphy said that they understand the staff's position, and they have worked hard within the past week to resolve these issues. He noted that there are residents of the area who will be speaking on these issues as well.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for approval. Michael Prather, President of the Townley Center Homeowners' Association, was present representing the residents of the area. He noted that he has lived at 136 Towne Square Park since 2006; and the residents, who live directly across Hatter Lane, were also present at the meeting. He said that they have worked with the applicant and come to an agreement, which they believe is a very good solution. He then said that everyone understood what they bought into, and this is the "new urbanism" that places single family homes at the heart of the development with townhomes and apartments toward the outer edge. There are different types of living in this area that are within walking distance from commercial uses, such as restaurants, dry cleaners and so forth.

Mr. Prather said that they are requesting that one drive-through be used at any given time for the entire building. The menu boards and speakers are at the ends of the building away from Hatter Lane; and the landscaping is above average mature plant material to provide at least waist-high screening, as well as softer light that is directed downward.

In conclusion, Mr. Prather said that they had informed the Meadowthorpe Neighborhood Association of this proposal, and they had stated that if the vote is unanimous with the agreement and the applicant's request, then this development should not be held up. He said that it is important to have good businesses rather than vacant buildings.

Planning Commission Questions – Ms. Copeland asked where the menu boards and speakers will be located in respect to Mr. Prather's residence. Mr. Prather illustrated on the rendering where his property is located in respect to the location of the menu boxes and speakers. Ms. Copeland asked if the drive-through median will remain. Mr. Prather said that he did not believe the drive-through median is in place at this time. He explained that the menu box and speaker would be located along Sharkey Lane, and the pick-up window would be along Hatter Lane. Ms. Copeland asked if this will have one-way traffic, to which Mr. Prather said that that was his understanding. Mr. Barrett explained the traffic pattern using the rendering, noting that two-way traffic would be at the front of the building, and the one-way traffic would be along the three remaining sides of the building.

Mr. Owens asked what neighborhood association Mr. Prather is associated with. Mr. Prather replied the single family homes of Townley Center.

Joe Albaugh, 132 Town Square Park, was present. He explained that he was excited to hear about the types of the businesses that would be coming to this shopping center. He is against having two drive-through windows running consecutively, but not against the drive-through windows being used one at a time. He then said that it is important to have mixed uses, and to keep these building occupied versus being vacant.

Planning Commission Questions - Mr. Wilson said that if this development does meet the minimum parking requirements, if reciprocal parking is needed during the day. Mr. Anderson said that the parking lot has not reached full capacity due to the types of businesses having different traffic patterns during the day. He then said that the Firehouse Sub traffic would peak during lunch, while the self-serve yogurt traffic would peak in the evening. A coffee and doughnut restaurant in this area would have their peak traffic in the morning. He said that he understands the neighbors' concern, and is agreeable with having one drive-through be active at any one time.

Mr. Wilson asked if he could park in the adjacent lots if he were to visit one of the businesses. Mr. Anderson replied affirmatively.

Mr. Owens asked if a condition should be added to denote the reciprocal parking or just add a note to the development plan. Mr. Murphy suggested that condition #11 be revised to read "Denote ~~the need for~~ reciprocal parking on the development plan."

Mr. Owens said that the way the menu boards and speakers are positioned, there could be vehicle stacking issues. Mr. Anderson said that he does not know if the drive-through on the self-serve yogurt store may go forward. He said that they are accommodating the need of the businesses that are moving in for them to be successful. Should that drive-through be used it, would be modified to provide stacking as long as it is recognized that the drive-through window will need to be at the end of the building.

Mr. Cravens asked if the drive-through window has been built, to which Mr. Anderson replied it has not.

Ms. Beatty applauded the applicant for communicating with the residents of this area since the Subdivision Committee meeting. She said that there was a lengthy discussion on this plan at the Committee meeting last week, and she appreciated that the applicant and the neighborhood have apparently come to a mutual agreement.

Ms. Copeland asked if the staff feels comfortable in recommending approval, given what has been said at today's meeting. Mr. Sallee replied that if the plan had been postponed today for 2 weeks, the staff might have been able to "get up to speed" with these new developments. He added that the conditions listed on today's agenda are adequate for this request.

Ms. Beatty asked if the staff's recommendation included the parking. Mr. Sallee said that condition #11 would be sufficient.

Mr. Penn asked if the staff is comfortable with the drive-through window stacking being short of what it should be. Mr. Sallee replied that the stacking for that drive-through window would be reviewed by Traffic Engineering at the time a permit was requested. Mr. Penn confirmed that the plan would be reviewed by the staff prior to the drive-through window being built. Mr. Sallee replied affirmatively, noting that either the requirements would need to be met or a dimensional variance granted. Mr. Barrett reaffirmed that if one drive-through is open, the other drive-through would be closed.

Ms. Roche-Phillips asked if the staff is comfortable with the reciprocal parking arrangement discussed, and the amount of parking spaces being adequate. Mr. Sallee replied that the minimum requirements are being met; but the timing is unknown at this time.

Mr. Owens echoed Ms. Beatty's comments, and said that at the Subdivision Committee meeting, there was a lot of discussion and concern with this request. He applauded everyone for their hard work on this request.

Ms. Roche-Phillips asked if the applicant's proposed note is intended to have one drive-through per building or business. Mr. Murphy replied that the proposed note is intended for the 3-unit single building, noting that only one drive-through window would be operational at any given time. Ms. Roche-Phillips confirmed that there cannot be three drive-through windows for three businesses. Mr. Murphy said that that is correct, noting that that is not what they are asking for. Ms. Roche-Phillips asked if the language could be tightened up and added as a condition.

Action - A motion was made by Ms. Beatty to approve DP 2011-83: SHARKEY PROPERTY, UNIT 1, LOTS 8 & 13 (AMD), subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Addition of final record plat for property (Plat Cab. M, Sl. 255).
9. Label tree island from previous plan.

10. Addition of grease trap note to the approval of the Division of Water Quality.
11. Denote the need for reciprocal parking on the development plan.
12. ~~Discuss the need for additional parking (over the minimum).~~

Discussion of Motion – Mr. Cravens asked if the new language from the applicant was included. Ms. Beatty replied affirmatively, and said that this is related to the staff's disapproval recommendations.

Ms. Roche-Phillips asked if the motion could be amended to delete "the need for" from condition #11. Ms. Beatty agreed and noted that condition #11 should now read "Denote reciprocal parking on the development plan."

Ms. Roche-Phillips then asked if a 12th condition should be added to reflect parking. Ms. Beatty said that condition #12 should read "Resolve the need for additional parking." Mr. Cravens objected, and said that Ms. Roche-Phillips' question was directed at the applicant's proposed note that was previously mentioned. He asked if a 12th condition should be added to read "Denote: Only one business shall have an operational drive-through window at any given time." Ms. Beatty agreed.

The motion carried 10-1 (Roche-Phillips opposed).

- b. DP 2011-86: HAMBURG PLACE COMMUNITY (MULTI-FAMILY), PHASE II-A, LOT 3 (12/1/11)* - located at 2391 Sir Barton Way. (Council District 6) **(HDR)**

The Subdivision Committee Recommended: **Postponement**. This plan no longer meets the minimum requirements for off-street parking.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trail and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Remove or denote timing restrictions for garages 25' from floodplain buffer.
10. Revise Old Rosebud Road cross-section to denote area of sidewalk easement.
11. Clarify tree protection area and tree protection plan for Lot 3.
12. Correct zone boundary on Old Rosebud Road (R-4/R-3) on this site.
13. Denote existing 30' sanitary sewer easement.
14. Denote the Board of Adjustment's approval of setback variance prior to certification.
15. Denote that CLOMR must be filed prior to Special Use Permit application.
16. Discuss status of traffic signal and right turn lane per notes #13 & 14.
17. Discuss proposed parking reduction.

Staff Presentation – Mr. Martin identified this final development plan on the regular Meeting Agenda, and noted that this property is located at 2391 Sir Barton Way. He directed the Commission's attention to the rendering, and oriented them to the surrounding street system. He said that the subject property is located just off Man O' War Boulevard in the Hamburg area at the corner of Old Rosebud Road and Sir Barton Way. He briefly described the existing land uses within the general vicinity, and noted that the subject property is located in a Planned Neighborhood Residential (R-3) zone.

Mr. Martin said that the applicant is proposing two 3-story apartment buildings, with 150 units and 225 off-street parking spaces. He then said that there will be a clubhouse, courtyards and a pool on site. Access will be provided off Old Rosebud Road, as well as Sir Barton Way. He said that there is a floodplain associated with this area; and as required by Article 9 of the Zoning Ordinance, there must be a 25-foot setback from the floodplain.

Mr. Martin said that the Technical Committee and Staff had recommended approval of the applicant's request at the September 28th meeting; however, when the applicant submitted a revised plan prior to the October 6th Subdivision Committee, the staff discovered that the plan no longer meets the minimum requirements for off-street parking. He then said that the applicant had submitted another revised plan on October 12th that addressed the minimum Zoning Ordinance requirements for off-street parking. Based upon the new development plan submittal, the staff can now offer the following revised recommendation:

The Staff Recommends: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.

* - Denotes date by which Commission must either approve or disapprove plan.

3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trail and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Remove or denote timing restrictions for garages proposed within 25' from of the floodplain buffer.
- ~~10. Revise Old Rosebud Road cross-section to denote area of sidewalk easement.~~
10. 11. Clarify tree protection area and tree protection plan for Lot 3.
11. 12. Correct zone boundary on Old Rosebud Road (R-4/R-3) on this site. Remove the building envelope conflict with the floodplain and the 25' floodplain setback.
- ~~13. Denote existing 30' sanitary sewer easement.~~
12. 14. Denote the Board of Adjustment's approval of setback variance prior to certification.
13. 15. Denote that CLOMR must be filed prior to Special Use Permit application.
14. 16. Discuss status of traffic signal and right turn lane per notes #13 & 14.
15. 17. Discuss Revise proposed parking reduction to indicate a surplus of at least 8 spaces.

Mr. Martin gave a brief explanation of those conditions, and noted that conditions #1 through 8 are typical "sign-offs" from the different government divisions and clean-up items. He then said that in reviewing the development plan, the proposed garages are within a floodplain area and with the current configuration those garages can not be built. The applicant can either address this conflict by denoting the timing of the restrictions for the garages being proposed in the 25 foot floodplain buffer area (condition #9), or apply for a CLOMR from FEMA. If the CLOMR is approved, the current configuration of the floodplain area would be revised, removing that conflict (condition #13).

Mr. Martin said that the overall area of the Hamburg Place Community has a tree protection plan proposed; and in reviewing Lot 3, the staff is requesting that the applicant also clarify the tree protection area and the tree protection plan for this section (condition #10). He then said that Lot 3 does have an impact on the overall canopy requirement of this area, noting the types of several significant trees on Lot 3.

Mr. Martin then said that the staff is requesting that the applicant denote the Board of Adjustment's approval of a setback variance prior to certification (condition #12). He then said that the applicant has submitted a proposed plan to the Board of Adjustment; and, if approved, the variance will reduce the setback to 20'. This type of request is similar to what was done with the Louie Place Apartments in the Sharkey development.

Mr. Martin said that in reviewing the revised development plan submission, there are two notes listed that are related to traffic improvements for this area. He then said these notes were a commitment made by the Hamburg and Tuscany developers. With the ongoing development in this area, it has come to a point where traffic improvements maybe needed. He said that the staff had spoken with Traffic Engineering; and the issue is not volume, but rather accidents in the area. He then said that this area has not reached its threshold to initiate a traffic signal, but it is close. He noted that the staff wanted to make the Commission aware of this issue at this time, (condition #14).

Mr. Martin then said that when the original zoning development plan was submitted (earlier this year); the parking requirements were in compliance with the regulations, showing the exact number needed. Due to the nature of this request and the amount of traffic, the staff was concerned as to whether or not there should be a surplus of parking. He said that in reviewing the applicant's proposal, 18 additional parking spaces were discovered. He then said that the staff realized that some of the 18 parking spaces may pose a problem, but felt at least 8 parking spaces could be used as a surplus. He said that the staff is requesting that the applicant revise the proposed parking to indicate a surplus of at least 8 spaces (condition #15).

In conclusion, Mr. Martin said that the staff is recommending approval of the applicant's request, subject to the revised conditions previously mentioned. He added that, if the Commission chooses to, condition #14 can be removed at this time.

Planning Commission Questions – Ms. Copeland asked if the developers of Hamburg and Tuscany will be paying for the installation of the traffic signal. Mr. Martin said that the staff understands that both have agreed to provide those improvements, as previously noted. Ms. Copeland then asked what would trigger those improvements. Mr. Martin said that it would be determined through a new traffic study. Ms. Copeland asked if the study would be requested. Mr. Martin replied affirmatively.

Mr. Owens asked if the applicant had submitted another revision to the plan. Mr. Martin said that the rendering being shown is the latest submittal. Mr. Owens then asked if the staff feels that more parking should be provided. Mr. Martin said that the staff believes additional parking would be beneficial.

Mr. Owens referred to condition #9, and asked if the proposed garages are included as part of the parking count. Mr. Martin replied affirmatively. Mr. Owens then asked what will happen if the CLOMR does not remove the conflict as previously mentioned. Mr. Martin said that the proposed garages will not be allowed in that area, noting that parking would still be allowed per the Special Use permit.

Representation – Dick Murphy, attorney, was present representing the applicant. He noted that his client, Joshua Purvis, Watermark Residential, is purchasing this land from the Heritage Baptist Church. He said that they are in general agreement with the staff's recommendation, except for condition #15.

Mr. Murphy said that the issue is the floodplain; and after speaking with the different government divisions, the floodplain did not take into account that the detention basins in Hamburg have been constructed and are functional. He said that everyone is confident that once the CLOMR (Conditional Letter of Map Revision) is submitted to FEMA and approved, the floodplain area will shrink in size. He then said that once their request is approved, they will receive a LOMR (Letter of Map Revision) for the garages to be built. He noted that parking is allowed as long as they obtain a Special Use Permit through the Division of Engineering.

Mr. Murphy stated that they are not in agreement with condition #15, which is to revise the proposed parking to indicate a surplus of at least 8 spaces. He said that they were not aware of this issue until the morning of the meeting. He directed the Commission's attention to the rendering of the site statistics, and said that this proposal meets the minimum parking for Lot 3. Mr. Murphy said that Lot 3 is zoned for High Density Apartments (R-4). The applicant is proposing a mixture of 1 to 3-bedroom units (totaling 150 units), which results in a parking requirement of 222 spaces; and they are providing 225 spaces. He explained to the Commission how the parking requirements were determined by using two different methods. He said that this is based upon the applicant's experience; they believe 1.5 parking spaces per unit is sufficient. He then said that they do have the means to provide additional parking spaces, if that becomes necessary. However, they do not want to pave the grass or landscape areas at this time if parking is not needed. He said that it is more beneficial to have less parking and more landscaping for the drainage of this area. He then said that there is a transit stop being provided on Sir Barton Way, as well as a bicycle rack on the property. These two amenities would allow the parking requirement to be decreased, but they are not using those options. They would rather not pave any additional areas since they meet the minimum parking requirements under the Zoning Ordinance.

In conclusion, Mr. Murphy said that they are in agreement with the staff's recommendation, to include the deletion of condition #14, and requested that condition #15 be removed as well.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for approval. There was no response.

Planning Commission Questions – Ms. Copeland asked what type of residents will be in these buildings. Mr. Purvis replied that they are expecting young professionals, not families. They are not proposing 3-bedroom units so they are not expecting an impact on the parking, which is why they feel 1.5 parking spaces per unit is appropriate for this development. Ms. Copeland asked if they feel the residents would be walking or driving to the nearby stores. Mr. Purvis said that walking to the nearby stores is not out of the question, but the residents could also drive or use the bus across Sir Barton Way.

Ms. Copeland then asked if the 8 parking spaces could be shown on the development plan, and not actually pave those areas but refers to them as temporary landscaping. Mr. Purvis said that might be possible, but the issue with that request would be installing a curb where the landscaping was. Their main concern was to maintain the existing landscaping in the area. Ms. Copeland asked if it could be done, particularly if those landscape areas were islands, to which Mr. Purvis replied affirmatively, and said that they are concerned with preserving the landscaping.

Ms. Copeland said that at the Subdivision Committee meeting, the staff had shown 18 additional parking spaces and asked for clarification. Mr. Martin said that the staff had previously demonstrated that there could be 18 additional parking spaces on site.

Ms. Beatty asked if the staff agrees with the applicant's reasoning concerning the minimum parking space requirements. Mr. Martin said that the applicant does meet the minimum parking requirement, but the staff was requiring additional parking spaces. Ms. Beatty then asked if the applicant could provide the surplus of parking. Mr. Murphy said that there is additional space if those parking spaces are needed, but they do not believe they will need the additional parking spaces. He then said that they are agreeable to showing those parking spaces on the development plan.

Mr. Cravens asked why the staff is requesting more parking spaces than what is required by the Zoning Ordinance, noting that this is the second request at today's meeting. He said that if the staff wants additional parking, they should change the Ordinance. The staff can not make this up. Mr. Martin said that the staff was concerned with the auto-centric nature of this development. He then said that there is a concern with the number of people who

may occupy these units. He noted that in Planning's past experience, the parking in apartment communities is overburdened by the number of residents.

Ms. Copeland agreed, and said that this development is automobile dependent since it is far away from services, with the exception of the bus stop. She then asked how condition #15 could be changed to denote the potential parking spaces on the development plan. Mr. Martin said that that could be done by showing the potential parking spaces as Phase II of the development, which would not require the applicant to build those spaces at this time. Ms. Copeland then asked what would initiate the proposed parking to be built. Mr. Martin said that for Phase II to be initiated it would be determined on the need. Ms. Copeland asked if the applicant is in agreement, to which Mr. Purvis replied affirmatively.

Mr. Cravens asked that the applicant to clarify what is agreeable to them concerning the surplus of parking. Mr. Purvis said that they are in agreement with regarding to show the proposed surplus parking being designated as Phase II.

Action - A motion was made by Mr. Owens, to approve DP 2011-86: HAMBURG PLACE COMMUNITY (MULTI-FAMILY), PH II-A, LOT 3, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trail and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Remove or denote timing restrictions for garages proposed within 25' of the floodplain buffer.
10. Clarify tree protection area and tree protection plan for Lot 3.
11. Remove the building envelope conflict with the floodplain and the 25' floodplain setback.
12. Denote the Board of Adjustment's approval of setback variance prior to certification.
13. Denote that CLOMR must be filed prior to Special Use Permit application.

Removing the following conditions:

14. Discuss status of traffic signal and right turn lane per notes #13 & 14.
15. Revise proposed parking to indicate a surplus of at least 8 spaces.

Adding the following condition:

14. Denote the potential Phase II parking on the development plan.

Discussion of Motion – Ms. Beatty asked what happened with the traffic signal. Mr. Cravens said that that condition was removed. Mr. Martin said that the staff wanted to make the Commission aware that these improvements will be needed in the future. He said that notes #13 & 14 are on the development plan and will remain.

Mr. Penn asked if condition #14 should indicate 8 parking spaces. Mr. Cravens said that the applicant indicated that 8 spaces would be denoted on the development plan.

The motion was seconded by Ms. Beatty, and carried 11-0.

Note: Mr. Brewer and Mr. Owens departed at this time.

C. PERFORMANCE BONDS AND LETTERS OF CREDIT – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Ms. Blanton, seconded by Mr. Berkley, and carried 9-0 (Brewer and Owens absent) to approve the release and call of bonds as detailed in the memorandum dated October 13, 2011, from Ron St. Clair, Division of Engineering.

Note: Mr. Brewer and Mr. Owens returned at this time.

V. ZONING ITEMS - The Zoning Committee met on Thursday, October 6, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

* - Denotes date by which Commission must either approve or disapprove plan.

Note: The Planning Commission postponed the public hearing on this text amendment on September 22, 2011.

1. ZOTA 2011-10: AMENDMENT TO ARTICLE 8-1(d) TO ALLOW AN HISTORIC HOUSE MUSEUM AS A CONDITIONAL USE IN THE A-R ZONE (2/1/12)* – a Zoning Ordinance text amendment to allow an “Historic House Museum” as a conditional use in the Agricultural Rural (A-R) zone.

REQUESTED BY: Kentucky Mansions Preservation Foundation, Inc.

PROPOSED TEXT: (Note: Text underlined indicates an addition to the current Zoning Ordinance.)

8-1 AGRICULTURAL RURAL (A-R) ZONE

8-1(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

x. Historic House Museums.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. Historic house museums are a suitable land use for a small number of locations in the Agricultural Rural (A-R) zone in order to preserve rural “historical treasures” for the benefit of the community. Significant historical and cultural resources may be protected and shared with the general public if such a use is added to Article 8-1(d) of the Zoning Ordinance.
2. The addition of this conditional use will be limited to 10,000 square feet in size, which is similar to how other non-agricultural conditional uses are regulated in our agricultural zones.
3. The Board of Adjustment will be able to evaluate each historic house museum on a case-by-case basis to determine its appropriateness based upon the provision of adequate public facilities, and potential impact(s) to the subject property or neighboring properties.

Staff Presentation - Ms. Wade identified ZOTA 2011-10 on the regular Meeting Agenda, and directed the Commission’s attention to the previously distributed staff report. She said that the staff had also received letters from Mill Ridge Farm, Blue Grass Trust for Historic Preservation and the Fayette Alliance. She noted that that Fayette Alliance had submitted an additional letter to the staff the day before today’s meeting.

Ms. Wade stated that the Kentucky Mansion Preservation Foundation, Inc. has made a request to amend Article 8-1(d) of the Zoning Ordinance to allow historic house museums in the Agricultural Rural (A-R) zone as a conditional use. She then said that Article 1-11 of the Zoning Ordinance generally defines historic house museums as a house being re-used as a museum, with accessory uses of the sale of objects and memorabilia and the holding of meetings and social events.

Ms. Wade said that in 2003, at the request of the Division of Planning and the Division of Historic Preservation, historic houses museums were first defined and added as a conditional use in residential zones. This request was done to help better protect and preserve the Pope Villa on Grosvenor Avenue. Since that time, the Pope Villa and the Tuska Museum were approved by the Board of Adjustment as historic house museums inside the Urban Service Area. She briefly explained that, prior to 2003; other houses in Fayette County have been similarly used, which includes the Hunt-Morgan House, the Ashland Estate, the Waveland Museum and the Mary Todd Lincoln House. Ms. Wade said that the 2003 text amendment codified this use in Fayette County, and now allows other homes to be transformed into historic museums as a benefit to the community. The 2003 text amendment allowed historic house museums in the residential zones, but it did not allow this use in the agricultural areas.

Ms. Wade said that, in 1994, the Urban County Council had established an ad hoc committee to review the A-R zone. In some cases, uses in the A-R zone were large in scale and out of character with the rural areas. She said that the conditional uses in the A-R zone that consumed large amounts of land, such as golf courses, were ultimately eliminated. She then said that the A-R zone currently allows 20 non-agricultural uses that are restricted to 10,000 sq. ft. of buildable area; and 7 additional conditional uses that are agricultural related and have no limitation on buildable area. The 10,000 sq. ft. buildable area restriction was established to protect the rural character of the county, and was based upon a survey of existing churches and non-residential conditional uses in the A-R zone. Those changes were drafted in 1994 and became effective in 1995.

Ms. Wade said that the Kentucky Mansions Preservation Foundation is now requesting that historic house museums be allowed in the A-R zone. The applicant has the opportunity to operate a museum at the residence known as Helm Place. This property is located on Bowman Mill Road, just outside of the Urban Service Area. It should be noted that there are two museums currently operating in the Rural Service Area; one is located at the Bluegrass Airport and the second is at the Kentucky Horse Park. She said that there is an additional museum, the Headley-Whitney Museum, that operates as a school and museum, also in the A-R area. The Headley-Whitney Museum is not a government facility, but rather is privately owned and operated.

* - Denotes date by which Commission must either approve or disapprove plan.

Ms. Wade said that the applicant had submitted a justification stating that historic house are appropriate in the A-R zone, and this would be a way to preserve the rural historic treasures for the benefit of the community. She then said that, in assessing the text amendment to the A-R zone, 98% of the Rural Service Area is zoned A-R, and the Commission should consider the long-term impact and unintended consequences of adding historic house museums as a conditional use in the A-R zone. The staff is in agreement with the applicant that there are a number of significant resources in the A-R zone that could be preserved for the benefit of the community. While the applicant did not specify whether the proposed use would be limited, the staff believes that there should be a limit to the buildable area. She said that the primary concerns are the potential traffic impact of everyday visitors and potential school fields trips to these museums. She said that if the Commission approves this request, the Board of Adjustment would have the authority to determine if adequate public facilities exist, to limit the size and number of special events; and to institute time limitations for any particular use on a case-by-case basis. There would also be the opportunity for the nearby neighbors of a proposed museum to come to the Board of Adjustment hearing to voice their concerns or support of that request.

In conclusion, Ms. Wade said that the staff is recommending approval of the applicant's request, for the following reasons:

1. Historic house museums are a suitable land use for a small number of locations in the Agricultural Rural (A-R) zone in order to preserve rural "historical treasures" for the benefit of the community. Significant historical and cultural resources may be protected and shared with the general public if such a use is added to Article 8-1(d) of the Zoning Ordinance.
2. The addition of this conditional use will be limited to 10,000 square feet in size, which is similar to how other non-agricultural conditional uses are regulated in our agricultural zones.
3. The Board of Adjustment will be able to evaluate each historic house museum on a case-by-case basis to determine its appropriateness based upon the provision of adequate public facilities, and potential impact(s) to the subject property or neighboring properties.

Ms. Wade noted that the applicant had met with several concerned organizations; and subsequent to those meetings, the applicant had submitted a revision of their alternative language to the Zoning Committee members; however, the staff is comfortable in recommending approval of the original language that was submitted with its application.

Planning Commission Comment – Chairman Cravens asked if anyone on the Commission wished to discuss this item.

Ms. Blanton asked which version of the alternative text the Commission should review, and what the changes are on the new submission. Ms. Wade said that the staff is comfortable with adding historic house museums with the 10,000 sq. ft. buildable area limitation, as well as having the Board of Adjustment review the requests on a case-by-case basis. She then said that the staff is aware that the applicant is willing to subject this use to the additional restrictions listed in the proposed alternative text. The staff is comfortable with the Board of Adjustment reviewing the request, rather than adding those restrictions to the Zoning Ordinance. She noted that the applicant's representative will address the specifics of the changes to their proposed alternative language.

Ms. Roche-Phillips said that all parties involved in this request were present at the Zoning Committee meeting last week; and at that time, the revised version was presented, to which the Committee had recommended approval. She suggested that the Commission should not be less restrictive. Ms. Wade confirmed that the Zoning Committee recommended approval of the applicant's alternative text.

Representation – Dick Murphy, attorney, was present representing the applicant. He said that his client, Kentucky Mansions Preservation Foundation, Inc., is a nonprofit organization that also operates the Mary Todd Lincoln House in Lexington. He noted that there were several board members present at today's meeting, to include Dee Dee Marin, Chairperson; Quinn Thompson, Executive Director, as well as other, and Jack Cunningham, who is the estate's attorney. He said that the board members are very dedicated and hard working people, who are willing to take on this significant responsibility for the benefit of the community.

Mr. Murphy said that even though this is a general ordinance, which applies throughout the A-R zone, they must present their proposal to the Planning Commission. He noted that the late Mary Genevieve and Joseph H. Murphy, Jr. (her husband) had made a generous gift to the foundation by donating their home. He said that their residence, Helm Place, is located on Bowman Mill Road, and will be used as a "period museum." He noted for the record that he is not related to the Murphys, but he did know them both personally. He said that this gift is a reflection of their generous spirit that was demonstrated throughout their lives.

Mr. Murphy briefly explained the history of Helm Place and said that the house was built in the 1850s by Colonel Abraham Bowman. Helm Place is situated on 150 acres, most of which is leased by Mill Ridge Farm for agricultural purposes. He then said that Helm Place is historic, it does have architectural significance and its sense of peace has been preserved through the years. He proceeded to list the previous owners of the property, to include Emilie Todd Helm, who was the step-sister of Mary Todd Lincoln. Ms. Helm was married to Confederate Brigadier General Benjamin Hardin Helm, who perished in the battle of Chickamauga. He said that William Townsend, a prominent Lexington attorney and collector of Lincoln memorabilia, was the next owner of Helm Place. He noted that Mary Genevieve Murphy was the daughter of Mr. Townsend, and she received Helm Place as a gift from her mother

Genevieve Townsend. He said that Helm Place was then given to the Kentucky Mansions Preservation Foundation, Inc.

Mr. Murphy submitted three photographs of the Helm Place Property, and said that the style of the house is a Greek Revival structure. There are several mature trees on the land as well as a pond to the left of the entrance. He then said that the mansion is located on 150 acres of land, and the rural character of the structure has been preserved. The Helm Place property is listed on the National Registry of Historic Places, it is the only rural property zoned H-1 in Lexington, and there is a conservation easement on the land (PDR protected farm). The next logical step would be to gift the land to the Kentucky Mansions Preservation Foundation, Inc. to be preserved as a museum. He said that this property is heavily regulated and should any architectural changes be proposed, the Board of Architectural Review would review those changes. He then said that since there is a conservation easement on the land, any changes in the use would need the approval of the Rural Land Management Board. Mr. Murphy said that, should the Planning Commission approve this text amendment, any request after today would need the approval of the Board of Adjustment to determine the appropriateness of the proposed use.

Mr. Murphy said that, as of today, historic house museums are not expressly allowed in the A-R zone. In 2003, the Planning Commission had approved historic house museums within the residential areas, and now there are two in the Urban Service Area. He noted that at the Zoning Committee meeting, they had requested postponement of this text amendment, due to concerns from the Fayette Alliance, the Rural Land Management Board and Mill Ridge Farm. He said that their concerns were the potential impacts of this text amendment in the A-R zone. He then said that they had met with all parties, including the Division of Historic Preservation, and have come to an agreement on the following language, noting that the text underlined and **bold** indicates an addition to the original alternative text that was previously submitted to the staff:

Historic House Museum operated by a governmental entity or by a private, non-profit entity which has Internal Revenue Code Section 501(c)(3) status and which is a member of a recognized museum association such as the Kentucky Museums and Heritage Alliance, the American Association for State and Local History, the American Association of Museum, the Association of Living History, Farm and Agricultural Museums and/or the Southeastern Museum Conference. Provided, however, that the house shall not be expanded beyond its current or documented historic footprint, and all activities and events shall relate to the educational mission of the governmental or non-profit entity.

Mr. Murphy said that the proposed language states that a responsible entity must operate this establishment either through a government entity or a private non-profit entity that has attained Internal Revenue Code Section 501(c)(3) status. The language also states that the entity must be a member of a recognized museum association, such as the Kentucky Museums and Heritage Alliance, the American Association for State and Local History, the American Association of Museum, the Association of Living History, Farm and Agricultural Museums and/or the Southeastern Museum Conference. He then said that the proposed language ends with stating that the house shall not be expanded beyond its current or documented historic footprint, and all activities and events shall be related to the educational mission of the governmental or non-profit entity.

In conclusion, Mr. Murphy said that all parties are in agreement with the proposed changes to the alternative text, and the requested approval. He noted that the applicant has operated museums of this nature for a number of years and it is an important aspect to this community and to tourism.

Jack Cunningham, Frost, Brown & Todd, LLC, was present as the trust administrator of the Mary Genevieve Murphy and Joseph H. Murphy, Jr. estate. He said that Mrs. Murphy's last will and testament had provided the property as a conditional gift, which stated that the property is to be held and operated as an historic house museum. He then said that he knew the Murphys and they did not anticipate the steps the foundation would need to take for their residence to operate as an historic house museum. Mr. Cunningham said that if the text amendment is not accomplished and due to the condition precedent, that property will be disposed of by the balance of the Mary Genevieve Murphy trust document. He then said that he wanted the Commission to understand the gravity of this request because it will be a loss to the community as an historic house museum.

Audience Comment – Chairman Cravens asked if anyone in the audience wished to discuss this item.

Knox Van Nagell, Fayette Alliance, was present. (A letter was previously distributed to the Commission by the staff, dated October 13, 2011, and is attached as an appendix to these minutes). She stated that Fayette Alliance had been working with all of the other interested parties, and they agree that the alternative text language is a "win-win" situation. She said that if the alternative text language is adopted, it would allow historic house museums as a non-agricultural conditional use in the A-R zone.

Ms. Van Nagell then said that the Fayette Alliance believes that this language strikes an appropriate balance between protecting our signature industries and the bluegrass landscape, while also securing new agritourism opportunities in the rural area. At this time, she read the following excerpt from the submitted letter to the Commission.

"The proposed text language accomplishes this balance by three ways. First, the text amendment establishes operational requirements. Not just anyone can open a "historic" house museum in the rural area. They must satisfy specific criteria in the Internal Revenue Code, and the property must meet the architectural and educational requirements of a bona-fide museum association. With these criteria in place, truly significant homes can be legitimately identified as museums for purpose of public education and appreciation - which is important given the environmental sensitive and infrastructure limitations of the rural area.

Second, the museum can not be expanded beyond its current or documented historic footprint. This will protect the "historic" envelope of the house that makes it significant and worthy of museum status, while also respecting the 10,000 square foot limitation of non-agricultural uses in the rural area. By operating within this footprint, it ensures the educational thrust of the museum's activities and will minimize potential disruptions to neighboring farms and residences.

Third, the rental of these museums for social, commercial and conference events is prohibited in the rural area. Only education activities such as tours, viewings and organizational meetings or symposiums would be allowed. However, fundraising and social activities may be a part of these educational events. This provision is key, as party museums in the rural area would not only undermine the 140-plus banquet and wedding rental facilities already doing business inside the city, but also would threaten the pastoral setting and infrastructure in place that supports ag-enterprise in Fayette County.

Fayette County farmland is different than most in the world, in that it is an active landscape teeming with valuable, yet fractious horses and livestock. This scenario is our international brand, but it is also a sensitive one vulnerable to traffic, noise, trespassers, waste, and water quality issues created by intensive commercial development.

Therefore, while we want to create additional agritourism opportunities in Fayette County, such as historic house museums, trails and other- it must be done carefully and in a way that first respects the needs of the signature industries and brand we want to celebrate.

By starting from this vantage point, and honoring the Rural Land Management Plan's fundamental recommendations that "Principle permitted uses in the rural area be those associated with agricultural and non-agricultural conditional uses be kept to a minimum (RLMP, III-6(4)), we will strengthen, not endanger, the proverbial goose that laid the golden egg in Lexington.

In so doing, we can continue a land-use tradition that attracts international investors the world-over to buy our priceless Fayette County soils for raising exceptional horses, livestock and food an enterprise that contributes \$3 billion annually to our regional economy and supports over 20,000 local jobs.

After requesting postponement of this issue a few weeks ago all interested parties worked together in faith to draft the alternative text amendment language. We believe it achieves a win-win for the entire community as it affords rural historic house museums viable business opportunities, while also safeguarding the needs of neighboring farms.

From an administrative standpoint, the proposal also makes a lot of sense because it clearly and uniformly regulates historic house museums in the rural area at the zoning ordinance level, and not on an inconsistent, case-by-case basis at the Board of Adjustment.

Attempting to regulate social and commercial events at the Board of Adjustment will put the legal and financial onus on Fayette County farmers to negotiate with museums on throwing parties. Countywide, farmers do not have the time nor the resources to be in the party planning business. Simply put, farmers and area residents would have to defend themselves every time a museum wanted to rent its facility for social events and this condition would jeopardize Fayette County's status and marketability as "Horse Capitol of the World."

The Fayette Alliance is proud to have worked with the Museum Foundation and Rural Land Management Board on this proposal and we respectfully request that you recommend its approval."

Billy Van Pelt, LFUCG staff for the Purchase of Development Rights (PDR) Program and Fayette County Rural Land Management Board, was present. He noted that all parties involved have been working on the alternative text for the historic house museum. He said that they support the applicant's proposed text amendment, but they are not in agreement with the staff's proposed text language due to not complying with the terms of the PDR conservation easement throughout Fayette County. He said that as for Helm Place, the Rural Land Management Board would have to withdraw their approval, if the staff's recommendation were to be approved. He then said that the Rural Land Management Board's approval is based upon the alternative text language that was submitted today, and is supported by the Fayette Alliance.

Mr. Van Pelt illustrated a series of photographs to the Commission and gave a brief description of each. (The photographs are attached as an appendix to these minutes). He noted that the Carrick House, at the corner of North Limestone and Third Street, is a social event facility. He then said that with the current historic house museum definition and the originally proposed text language, the special events, as well as the proposed 10,000 sq. ft. buildable area, would become primary; while the agricultural events, the historical structure and value would become secondary.

In conclusion, Mr. Van Pelt said that they have worked with the applicant, as well as with the Fayette Alliance, and they believe the applicant's new proposed text language is a "win-win" result for the entire community.

Headley Bell, Mill Ridge Farm, was present, and said that they are in support of the proposed text amendment. He said that Mill Ridge Farm has leased 130 acres that surrounds Helm Place since 1985. The Murphys generosity of this gift indicates what tremendous people they were. He said that the land is a vital part of their farm and they want to thank everyone who was involved with the proposed text language.

Bettie Kerr, Division of Historic Preservation, was present. She said that they had met with the applicants concerning the proposed alternative text and they had made the suggestion to add the word "documented" to the language. She then said that Helm Place is the only rural H-1 designated property to date in Fayette County. She noted that the Murphys were unbelievable protectors of this property and this is a tremendous gift to the community. Ms. Kerr requested that the Commission support the alternative text that was presented today and grant approval of this text amendment.

Planning Commission Discussion – Ms. Blanton asked what the time line is before the house is lost. Mr. Murphy said that there is no deadline at this time, but the decision must be quick. Ms. Blanton asked if the Kentucky Mansions Preservation Foundation, Inc. also operates the Mary Todd Lincoln House; and, if so, how the house is maintained. Mr. Murphy replied affirmatively, and said that the house is maintained through an admission charge, as well as contributions that are donated.

Mr. Owens said that even though this is a zone type text amendment, he believes it is appropriate for the entire A-R zone. He said that he also believes in definitive guidelines for the Board, but the proposed language would be appropriate. He appreciated everyone who was involved in the drafting of the proposed text language, and he is in support of the alternative text submitted at today's hearing.

Mr. Penn said that in listening to the testimony given, he had thought of 20 different homes that could very well be used as historic house museums in the A-R zone. These homes are very well maintained and of an historical period, but he is concerned that the text amendment be done correctly. He said that this is the first text amendment for the A-R zone, which is a precious zone for the community. He then said that the A-R zone needs to be reviewed in a way that it will not hamper the agricultural areas.

Mr. Brewer commented that he agreed with what has been said, but in his experience it is unprecedented how there have been two potential very contentious issues. He applauds everyone associated with this case and the previous case with the work that had been done in advance. He then said that, as far as the alternative language is concerned, he believes it is appropriate.

Ms. Blanton said that if we believe this amendment will create or allow agritourism, then we are fooling ourselves. She said that if the Mary Todd Lincoln home can not stand on its own and be self sustaining, then this house will not be a generator for the agricultural community. When reviewing the Comprehensive Plan and Rural Land Management Plan, preserving the land should be considered; but real agritourism should also be reviewed to bring in money. She said that having weddings on agricultural land is better than subdividing the land into 40-acre lots. She then said that this request needs to be realistic and mindful of the rural character, and do what is needed to help farms to keep them out of foreclosure for those who do not want to subdivide into 40-acre lots.

Ms. Copeland said that her family knew the Murphys very well throughout the years, and they were a "class act." She then said that they were elegant, refined southern people, who shared their house. She said that they would not want a circus at their house and believes that the Murphys would be happy with the alternative text language.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson, and carried 11-0 to approve ZOTA 2011-10: AMENDMENT TO ARTICLE 8-1(d) TO ALLOW AN HISTORIC HOUSE MUSEUM AS A CONDITIONAL USE IN THE A-R ZONE, for the reasons provided by staff; and to approve the following alternative text language:

Historic House Museum operated by a governmental entity or by a private, non-profit entity which has Internal Revenue Code Section 501(c)(3) status and which is a member of a recognized museum association such as the Kentucky Museums and Heritage Alliance, the American Association for State and Local History, the American Association of Museums, the Association of Living History, Farm and Agricultural Museums and/or the Southeastern Museum Conference. Provided, however, that the house shall not be expanded beyond its current or

documented historic footprint, and all activities and events shall relate to the educational mission of the governmental or non-profit entity.

VI. COMMISSION ITEMS – The Chair announced that any item a Commission member would like to present would be heard at this time.

B. BOAR 2011-1: JAMES V. JOHNSON – an appeal of BOAR denial of a change to the property (paint previously unpainted brick walls and chimneys on both the left and right sides of the structure) at 615 Boonesboro Avenue.

Staff Presentation – Ms. Rackers stated that the appellant, James Johnson, who owns the property at 615 Boonesboro Avenue, is requesting an appeal of the August 10, 2011, Board of Architectural Review (BOAR) denial of a Certificate of Appropriateness for a change to the property, consisting of painting two walls of the residence. She directed the Commission's attention to a map of the overall area, and oriented them to the subject property and to the street system within the general vicinity. She said that the structure is in the Bell Court Historic District, it is a 1½-story brick residence with two painted walls (front and rear) and two unpainted walls (each side), including chimneys that have never been painted.

Ms. Rackers said that in mid-July, during a visit through the Bell Court Historic District, the Preservation inspector noticed that painters were beginning to cut in around the stone foundation of the residence. She then said that the inspector told the painters to cease, as a Certificate of Appropriateness (COA) was needed for the exterior work. The following Monday, the appellant submitted an application for a COA to paint the two previously unpainted brick walls and chimneys on the right and left sides of the house. She then said that the BOAR reviewed this request on August 10, 2011, at which time the application was disapproved. The Board stated that this request was in violation of guideline I.3.H.: Brickwork and masonry that has never been painted should not be painted.

Ms. Rackers said that the BOAR staff has several photographs of the property that date back before Bell Court became a historic district. The photographs show the front wall of the structure being painted, as well as the rear wall; but the two side walls had never been painted. She said that this is significant because when a historic district is implemented, the existing conditions of a property are grandfathered, which generally determines what can be done to a property in the future.

Ms. Rackers directed the Commission's attention to the following guidelines that were cited by the Historic Preservation staff to the Board of Architectural Review regarding painting the unpainted brick.

- I.1.A. Architectural details and features shall be maintained/retained and shall not be removed or changed if original to the building.
- I.1.E. Architectural details and features, if replaced, should approximate the size, shape, material, color, texture and other visual qualities of the original materials.
- I.3.A. Brickwork and masonry materials original to the building should be preserved and maintained.
- I.3.H. Brickwork and masonry that has never been painted should not be painted.
- I.3.I. Brickwork and masonry that was historically painted should remain painted.

Ms. Rackers said that the appellant had stated in his BOAR presentation that he originally painted the two walls of the house in anticipation of the H-1 overlay. For whatever reason, he was not able complete the painting of the house. She said that the appellant had also stated that he believed that the structure was considered painted and did not realize that only two painted walls did not constitute a painted structure. This is one interpretation of the guideline, which theoretically the remaining walls to be painted. She noted that the BOAR Chairperson did; in fact, say that this was one was to interpret the Design Guidelines. However, the BOAR and the staff had a second, more restrictive, interpretation of the Design Guidelines. She said that this interpretation applies to individual walls of a structure, rather than a single, total structure, which would not allow additional paint on the house. She then said that the appellant had stated that after the two walls were first painted he had moved out of the area, renting the house for 10 to 12 years. During that time, the tenants had tried to remove the paint. She said that he has moved back to Lexington, and he would like to finish what he had started.

Ms. Rackers said that in reviewing the Design Guidelines, guidelines I.3.H and I.3.I seem to conflict with each other. She then said that during the BOAR hearing, there was discussion among the Board members, and they determined that I.3.H should apply to individual walls, which resulted in the disapproval of the appellant's request.

Ms. Rackers then said that in reviewing this case, the Planning staff can find no flaws in the review of the appellant's request by either the Historic Preservation staff or the Board of Architectural Review. She noted that the BOAR interpreted and applied the Design Guidelines as they were charged to do. However, since these are design guidelines, they are subject to interpretation; and for this case, the guidelines seem to be in conflict with each other. She said that there are basically two ways to make all four walls match, which would either violate I.3.H or I.3.I. She then said that having all four walls match (either painted or not) would contribute more to the overall character of the neighborhood than having two walls painted and two walls unpainted. Ms. Rackers said that since the front and rear of the house have already been painted twice, it would be costly and very difficult to remove all the paint. There is no guarantee that the four walls would match once the paint was removed, plus it could damage the brick of the house.

Ms. Rackers said that there are two distinct interpretations as to what constitutes a “painted” structure and what should be the desired outcome. She then said that the BOAR and Historic Preservation staff took the more restrictive approach, referring to individual walls. The appellant relied on a more general approach in that any part of a structure that is painted meant that the house is painted. She said that case law mandates that whenever there is a clear ambiguity with a local land use regulation, it must be construed in favor of the property owner.

In conclusion, Ms. Rackers said that based upon the staff’s review, the staff can support the appellant’s interpretation of Guideline I.3.H, and recommend approval, for the following reasons:

1. Although the denial of a Certificate of Appropriateness by the Board of Architectural Review was consistent with their charge in interpreting the Design Guidelines established by the local Historic Preservation Commission (specifically Guideline I.3.H., as it applies to painting the remaining two walls of the residence at 615 Boonesboro Avenue), in this specific case it seems that the overall character of the entire neighborhood/historic district outweighs maintaining the architectural integrity of two walls of an otherwise painted residence.
2. Given the two valid interpretations of Guideline I.3.H., and given legal deference to the property owner in this matter (based on case law), the more general interpretation of “brickwork and masonry on a structure that has never been painted should not be painted” can be supported, rather than “brickwork or masonry on a surface that has never been painted should not be painted.”

Historic Preservation Staff Presentation – Bettie Kerr, Director of Historic Preservation; and Amelia Armstrong, Inspector, were present. Ms. Kerr submitted into the record the Certificate of Appropriateness application, the August 10th Board of Architectural Review minutes, Article 13 of the Zoning Ordinance (Historic Preservation section), and the Design Guidelines.

Ms. Kerr presented several photographs to the Commission and gave a brief description of each. (A copy of the mentioned items is attached as an appendix to these minutes). She said that there are 155 properties located within the Bell Court Historic District and at least a third of those houses are painted, while the remaining houses are unpainted and in their natural condition.

Ms. Kerr said that, as for working with the Design Guidelines, there was no ambiguity with this case as it was previously suggested. She then said that, in terms of the guidelines, each application is reviewed on a case-by-case basis, specific to the individual structure where work is taking place. At that time, the staff determines whether or not the work being done is appropriate for that structure, as well as determining if the work is appropriate for the historic fabric of the area.

Ms. Kerr said that the fact that the paint was only introduced in the 80s is an important aspect when considering this case. She said that this property is not what would be considered as being a “historically painted” house. A historically painted house has been painted for several decades, and there is evidence of paint that has been built up over the years. She said that one of the processes that they are being charged with is weighing the character and the identity of this house, historically. It is not uncommon for a person to come forward after purchasing a house in the historic area, requesting that the paint be removed. She said that the same guidelines would be utilized for that type of request, as well.

Ms. Kerr said that this house is within an H-1 area and when brought under the H-1 overlay, it brought mixed messages, being only half painted; however that doesn’t suggest furthering what would not normally be approved with the current regulations. She said that this structure was grandfathered in with two painted walls, but the guidelines do not approve a request that is partially in violation. She then said that should the property owner request to take the structure back to its natural condition, the staff would not object. The property owner does have the right to keep the structure in its current condition with two painted walls and two unpainted walls; but it is not appropriate to further what would not normally be an appropriate situation in an H-1 area. It should not be difficult to remove the paint, and the question remains as to whether it is appropriate to paint the unpainted walls

Ms. Kerr said that the BOAR denial is very consistent with past recommendations for similar requests. She then said that this is an unusual situation and is not seen very often, but the BOAR recommendation is based on what they are charged with. She requested that the Planning Commission uphold the BOAR recommendation and deny the appellant’s request.

Planning Commission Questions – Chairman Cravens asked if anyone on the Commission wished to discuss this item. Ms. Copeland said that she is amazed with the talent that sits on the BOAR; and if the staff knew the Board members’ qualifications, it would certainly give them pause with their recommendation. Ms. Kerr said that the community has been very fortunate with the current Board members, noting that three of the members are architects. Ms. Copeland spoke to the qualifications and status of the BOAR members, and noted that Graham Pohl, Gregory E. Hosfield, Ronald Jackson and Nathan Billings are not regular people who sit on this Board. There is a trend that is happening with a person’s individual rights and how historical areas are interpreted. She said that other historical areas in the United States have different rules than Lexington; and to keep Lexington’s historical areas authentic, those determinations should be based on the history of Lexington. This house, in its current condition, does not look authentic to 1920 conditions. She said that she supports the BOAR decision and she believes that the Commission should respect their judgment.

Appellant’s Presentation - James Johnson, property owner of 615 Boonesboro Avenue, was present. He said that in anticipation of the H-1 overlay being implemented, he started painting the house to what he thought would satisfy the

pending regulations. He then said that he had moved out of Lexington for a number of years, and at that time, the house was not completely painted. Now he has moved back to Lexington, and has decided to finish the house. He said that he and his neighbors have a good relationship, and they had complimented him on wanting to finish the project since it did not make sense to have two painted walls and two unpainted walls. Mr. Johnson said that this neighborhood has a variety of houses, which includes 32 painted brick houses. He then said that he would like to finish his house, and requested that the Planning Commission allow his request.

Planning Commission Questions – Mr. Wilson asked how many homes are in the neighborhood. Mr. Johnson said that previously it was stated there are approximately 130 homes in the area, but he is unsure. Mr. Wilson then asked if there are 32 painted brick structures. Mr. Johnson replied affirmatively.

Mr. Brewer said that if this request is denied, that will leave two painted walls and two unpainted walls on this residence, which sounds ridiculous. He then said that the natural brick would look better, but this is not his house. He asked if this request is denied, who would pay for the removal of the paint. Ms. Kerr said that due to the fact that the painted walls were an existing condition, the property owner has the right to continue with two painted walls and two unpainted walls, but on the portion of the brick that is freshly painted, the paint would need to be removed. Mr. Brewer said that he has great respect for the BOAR members, and he understands the concept of being grandfathered in, but this house needs to be uniform. He then said that the BOAR has more experience and knowledge with historic issues; but if he lived in this area, he would not want to see this house half painted and half unpainted. He believes if the city is going to prohibit the property owner from painting the remaining walls, then the city should take on the responsibility of the cost for the removal of the paint. Ms. Kerr said that the property owner can elect to remove the paint, which would require a permit, but she can not authorize funding on behalf of the LFUCG. She then said that she believes the paint can be easily removed since portions of the house were in the process, until recently. She noted that the H-1 process does not review paint color.

Mr. Paulsen asked if the house has been painted for approximately 30 years, to which Ms. Kerr verified. Mr. Paulsen asked, if the appellant applies for a permit to remove the paint, if the staff would approve that request. Ms. Kerr said that that is correct. Mr. Paulsen said that guideline I.3.I. states that "Brickwork and masonry that was historically painted should remain painted." He asked if the property owner sells this house, and 30 years from now the next property owners decide to remove the paint, if the house is considered historically painted; and if so, if the staff would approve that request. Ms. Kerr said that at that time, the BOAR would interpret the Design Guidelines as they see fit, but its historical character is its natural unpainted brick. Mr. Paulsen said 30 years ago Mr. Johnson's intention was to paint the entire house. He then said that his concerns are the future property owners, who will be stuck with a half-painted house. Ms. Kerr said that this is the first time this situation has occurred.

Ms. Copeland referenced a previous photograph, and said that historically (prior to use of air conditioning) people considered the outside porch as an additional "room" and painted the front walls of the house. This "addition" serves the purpose of remaining outside until the house was able to cool off.

Mr. Owens said that, for whatever reason, only part of the house was painted prior to the H-1 overlay being implemented. He said that he would rather see the entire house be painted; therefore, he agrees with guideline I.3.I., which reads "Brickwork and masonry that was historically painted should remain painted."

Audience Comment – Chairman Cravens asked if anyone in the audience wished to discuss this item.

Action - A motion was made by Mr. Owens, seconded by Ms. Blanton, and carried 8-3 (Beatty, Brewer and Copeland opposed) to approve the appellant's appeal and recommend approval, for the following reasons:

1. Although the denial of a Certificate of Appropriateness by the Board of Architectural Review was consistent with their charge in interpreting the Design Guidelines established by the local Historic Preservation Commission (specifically Guideline I.3.H., as it applies to painting the remaining two walls of the residence at 615 Boonesboro Avenue), in this specific case it seems that the overall character of the entire neighborhood/historic district outweighs maintaining the architectural integrity of two walls of an otherwise painted residence.
2. Given the two valid interpretations of Guideline I.3.H., and given legal deference to the property owner in this matter (based on case law), the more general interpretation of "brickwork and masonry on a structure that has never been painted should not be painted" can be supported, rather than "brickwork or masonry on a surface that has never been painted should not be painted."

VII. STAFF ITEMS – The Chair will announce that any item a Staff member would like to present will be heard at this time.

- A. FAYETTE COUNTY PUBLIC SCHOOLS** – the staff has received notification of interior and minor exterior renovations to Fayette County Public Schools' warehouse facility at 1126 Russell Cave Road, which was the subject of a Public Facilities Review in 2009. This is for informational purposes only.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early

* - Denotes date by which Commission must either approve or disapprove plan.

rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. **NEXT MEETING DATES** –

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	October 20, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	October 26, 2011
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	October 27, 2011
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	November 3, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	November 3, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 10, 2011

IX. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 4:35 PM.

Mike Cravens, Chair

Lynn Roche-Phillips, Secretary